IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 34 of 2007
With
FIRST APPEAL No. 35 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO - Appellant(s)
Versus
GANESHBHAI NARAYAN KARANDIKAR & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR MTM HAKIM for respondent(s) : 1.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Appeals are admitted. Learned advocate Shri Hakim waives service of notice of admission of the appeals for respondent No.1, original claimant. Presence of other respondents would not be necessary for disposal of the appeal. At the joint request of both the parties, the appeals are taken up for final disposal today.

2. These appeals are directed against a common judgment and two separate awards dated 28th September 2004 passed by the Motor Accident Claims Tribunal (Main), Vadodara in Motor Accident Claims Petitions Nos.1784 and 1785 of 1991.

3. In a motor vehicle accident which took place on 6th October, 1991, one Balkrishna Narayan and his wife Ujwalaben received fatal injuries. For the death of Balkrishnabhai, his brother, his sister and parents of his wife filed claim petition being MACP No.1784 of 1991 seeking compensation of Rs.2 lacs from the original opponents i.e. driver, owner and insurer of the vehicle involved in the accident. For the death of Ujwalaben also, the same claimants i.e. brother of Balkrishna, his sister and parents of Ujwalaben filed MACP No.1785/91 seeking compensation to the tune of Rs.1 lac.

4. During the pendency of the claim petitions,

sister of Balkrishna as well as parents of Ujwalaben expired. Both the claim petitions were, therefore, maintained by Ganeshbhai, brother of Balkrishna alone.

5. The Claims Tribunal awarded a sum of Rs.1,87,000/- to the sole surviving claimant in MACP No.1784/91. The Tribunal found that deceased Balkrishna was earning a Rs.3663.26 ps. per month on the date of the accident. His prospective income was assessed at Rs.4,000/- per month. One-third i.e. Rs.1350 was deducted from the income towards personal expenditure of the deceased. Dependency benefit was worked out at Rs.2650/- per month i.e. Rs.31,800/- per year. The Tribunal adopted multiplier of 5 and worked out the dependency benefits at Rs.1,59,000/-. The Tribunal added conventional amount of Rs.20,000/- for the loss to estate and Rs.3,000/- for funeral expenses and Rs.5,000/- for pain, shock and suffering since the deceased survived for some time after the accident.

6. With respect to MACP No.1785 of 1991, the Tribunal held that deceased Ujwalaben was earning a sum of Rs.1200/- per month on the date of accident. One-third thereof i.e. Rs.400/- was deducted for personal expenditure of the deceased. Dependency benefit was worked out at Rs.800 per month i.e. Rs.9600/- per year. Adopting multiplier of 7, the Tribunal worked out the loss of dependency benefits of the claimant at Rs.67,200/-. To that the Tribunal

added an amount of Rs.20,000 for loss to the estate and Rs.3,000/- for funeral expenditure and a total award of Rs.90,200/- was made by the Tribunal in the said Claim Petition.

7. The Tribunal also awarded interest at the rate of 12 per cent from the date of claim petition till 31st December 1999 and at the rate of 9 per cent per annum thereafter till realisation.

8. The appellant Insurance Company has filed the present appeals challenging the said awards passed by the Tribunal.

9. With respect to the nature of accident and negligence of the driver of the offending vehicle in causing the accident which ultimately resulted into death of above-mentioned two persons, no arguments have been advanced by the appellant Insurance Company either in the appeal memo or before us through its learned advocate.

10. Primarily, the contentions of the appellant Insurance Company have been that Ganeshbhai was not a dependent of the deceased persons and that, therefore, no award could have been made in favour of the said claimant. It is contended that at the very best, Ganeshbhai could have received conventional sum of Rs.20,000/- for loss to the estate and Rs.3,000/- awarded for funeral expenses. It was contended that Ganeshbhai not being a

dependent of either of the two deceased, the Claims Tribunal could not have awarded any sum other than above mentioned sums in favour the said claimant.

11. It was also contended that that in any case, the deceased persons could not have set apart two-third of their income for either the benefit of the dependents, even if there were any, or for their personal savings which can be passed on to the legal heirs.

12. On the other hand, learned advocate Shri Hakim appearing for the original claimant submitted that Ganeshbhai was the legal heir of deceased Balkrishna as well as his wife Ujwalaben. He submitted that Ganeshbhai had also obtained succession certificate. From the provisions contained in Hindu Succession Act, 1956, he pointed out that in absence of any other legal heirs of class I, Ganeshbhai was the sole surviving heir of deceased Balkrishna. He also drew our attention to the provisions contained sections 15 and 16 of the Hindu Succession Act to point out that even for Ujwalaben, Ganeshbhai being the brother of her husband is the legal heir and in absence of any other heir having prior claim over Ganeshbhai, he had full legal authority and right to receive compensation.

13. He further submitted that sister of deceased Balkrishna was a widowed sister who was residing with

Balkrishna and that she was a dependent and that therefore was entitled to claim compensation. Even if the sister of deceased Balkrishna expired during the pendency of the claim petition, the same would not frustrate the claim of Ganeshbhai since in any case, after her death her estate would devolve upon Ganeshbhai.

14. In support of his contentions, learned advocate Shri Hakim placed reliance on a decision of the Apex Court in the case of **G.S.R.T.C. v. Ramanbhai,** 1987(2) GLR 1104. In the said decision, the Apex Court while upholding the judgment of this High Court observed that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under section 110-A of the Act if he is a legal representative of the deceased.

He submitted that even if it is believed that the deceased would not have set apart two-third of his income either for their savings or for expenditure on other dependents, the same would substantially get off-set by lower multipliers adopted by the Tribunal in both the claim petitions. He submitted that Balkrishna was aged 56 years and his wife was aged 53 years on the date of the accident. The Triubnal adopted the multiplier of 5 and 7 respectively. He drew our attention to Schedule to the Act providing for structured formula for deciding claim petitions under section 163-A of the Motor Vehicles Act. He submitted that accordingly,

the Tribunal should have adopted higher multipliers in both the cases.

15. Having heard the learned advocates appearing for the parties, we find that though Ganeshbhai being brother of the deceased Balkrishna and admittedly staying separately in a different city may not have been dependent on the income of the deceased Balkrishna or his wife, nevertheless, in the facts of the case, the claim petitions cannot be dismissed on that ground alone.

16. We find that at the time of filing of the claim petition, sister of Balkrishna was very much alive. She was an aged person and was residing with Balkrishna and his wife. She was a widow. Her dependency on Balkrishna, therefore, cannot be doubted. In that view of the matter, the sister of deceased Balkrishna could easily be considered to be a dependent on Balkrishna. After her death, her estate would devlove on the surviving legal heirs which would be Ganeshbhai as her brother in the present case. Even if it is taken that sister of the deceased Balkrishna was not dependent, claim of Ganeshbhai cannot be defeated. As observed hereinabove, the Apex Court in the case of G.S.R.T.C. v. Ramanbhai (supra) held that brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under section 110-A of the Act, if he is a legal representative of the deceased.

17. In the case of **Gobald Motor Service v. Veluswami,** AIR 1962 SC 1, the Apex Court considered the question of right of a legal representative to seek compensation for death of a person in a vehicular accident. The Apex Court, noted with approval the observations of the Lahore High Court in which it was held that the law contemplates two sorts of damages: the one is the pecuniary loss to the estate of the deceased resulting from the accident and the other is the pecuniary loss sustained by the members of the family through his death. The action of the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while damages for the loss caused to the estate are claimed on behalf of the estate and when recovered from part of the assets of the estate.

18. It would, therefore, be clear that as the heir of deceased Balkrishna, Ganeshbhai had the right to receive that part of the estate of the deceased which he would have saved during his life time.

19. Similarly, for the death of Ujwalaben, if one refers to sections 15 and 16 of the Hindu Succession Act, it would be clear that in absence of any other legal heir claiming precedence over him, Ganeshbhai being brother of the husband of Ujwalaben would be the sole surviving legal heir. He would, therefore, be entitled to receive that amount which Ujwalaben would have saved during her life time.

20. Considering these legal aspects, we have no hesitation in coming to the conclusion that the Tribunal correctly drew awards in favour of claimant Ganeshbhai. The contention of the appellant Insurance Company that Ganeshbhai could not have received any amount not being dependent on the deceased persons, therefore, has to be negatived.

21. Coming to the question of quantum of compensation in case of MACP No.1784 of 1991, we find that the Tribunal erred in setting apart two-third of the income of deceased Balkrishna for the benefits of the dependents/legal heirs. As noted earlier, the Tribunal calculated prospective income of the deceased at Rs.4,000/- per month. Considering the size of the family and the relation of the claimant with the deceased, in the facts of the case, setting apart two-third of the income for the claimants would not be justified. The deceased for himself and his wife would surely have spent at least two-third of his monthly earnings and saved the rest. Considering these aspects of the matter, in our view, only Rs.1350/- from the prospective monthly income of Rs.4,000/- of the deceased could be set apart for working out the compensation. This amount would, therefore, comes to Rs.16,200/- per annum. We are in agreement with the submission of learned advocate Mr.Hakim for the claimant that in the present case, multiplier of 8 should have been adopted. We have adopted the provisions made in the structured

formula under Schedule to the Motor Vehicles Act for the purpose of multiplier by way of guideline as observed by the Apex Court in the case of **Kaushnuma Begum v. New India Assurance Co. Ltd.**, (2001) 2 SCC 9. Thus the loss of dependency would come to Rs.1,29,600/- (Rs.16200 x 8). To this, we may add the conventional amount for loss to the estate of Rs.25,000/- and Rs.5,000/- for funeral expenses and Rs.5,000/- for pain, shock and suffering awarded by the Tribunal. Thus the total computation would come to Rs.1,65,000/-.

22. With respect to Claim Petition No.1785 of 1991 also we find that two-third of the monthly income of the deceased could not have been set apart for the benefits of the claimant. Considering the family of the deceased and her income, it would be appropriate to accept that she would have used two-third of her monthly income for her personal expenditure and for the expenditure of her immediate family. Setting apart one-third of her income as saving, the benefit in this case would come to Rs.400/- per month i.e. Rs.4800/- per year. Here also, taking into account the multiplier as provided in Schedule to the Motor Vehicles Act to be applied in case of compensation under section 163-A of the Motor Vehicles Act and utilising the same as a guideline, multiplier of 11 for the deceased aged 53 years can be adopted. Loss of dependency benefit would, therefore, be worked out at Rs.52,800 (Rs.4800 x 11). To this, we may add the conventional amount

of Rs.25,000 for the loss to the estate and Rs.5,000/- for funeral expenses. The total compensation would, therefore, come to Rs.82,800/-.

23. Both the awards stand modified accordingly. The claimant shall receive Rs.1,65,000/- in First Appeal No.34 of 2007 and Rs.82,800/- in First Appeal No.35 of 2007. Directions for payment of interest provided by the Tribunal remain unchanged.

24. It is stated that the appellant Insurance company has deposited the entire award amount before the Claims Tribunal. In view of the modifications made by this Court while disposing of the appeals, excess amount together with proportionate costs and interest shall be refunded to the appellant Insurance Company within a period of one month from the date of receipt of a copy of this order.

25. With the above modifications, both the appeals are partially allowed and disposed of accordingly.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)